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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW
TW-A325
Washington, DC 20554

**Re: Reply Comments of Infinity Broadcasting Operations Inc.
MM Docket No. 01-281 (RM-10287)**

Dear Ms. Salas:

Infinity Broadcasting Operations Inc. ("Infinity"), licensee of Radio Station WVEE(FM), Atlanta, Georgia, by its attorneys, hereby submits an original and four copies of Infinity's Reply Comments in response to the Notice of Proposed Rulemaking in MM Docket No. 01-281 (RM-10287).

Please date-stamp the enclosed "Return Copy" of this filing and return it to the courier delivering the package.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully yours,



John D. Poutasse

cc: R. Barthen Gorman, Mass Media Bureau (via hand delivery)

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Amendment of Section 73.202(b),)
Table of Allotments)
FM Broadcast Stations.)
(Watkinsville & Washington, Georgia)

MM Docket No. 01-281
RM-10287

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To: Chief, Allocations Branch

DEC 11 2001

REPLY COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Infinity Broadcasting Operations Inc. ("Infinity"), licensee of Radio Station WVEE(FM), Atlanta, Georgia, hereby submits its Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. Southern Broadcasting Companies, Inc. ("Southern"), which has received Commission approval to acquire the license of Radio Station WXKT(FM), Channel 261A, Washington, Georgia, initiated the instant proceeding to amend Section 73.202(b) of the Commission's Rules, the FM Table of Allotments, by reallocating Channel 261A from Washington to Watkinsville, Georgia. Infinity's Reply Comments in this proceeding are directed toward the Counterproposal filed on November 20, 2001 by New Tracks Media ("NTM").¹ NTM requests that the Commission deny the Southern proposal and instead amend Section 73.202(b) to delete Channel 261A from Forsyth, Georgia, substitute Channel 279A at Forsyth, delete Channel 279A from Irwinton, Georgia, substitute Channel 278A at Irwinton, and assign Channel 261A to Gray, Georgia. Counterproposal at 2. As part of its Counterproposal, NTM also requests the reclassification of

¹ NTM did not send a service copy of its Counterproposal to Infinity.

Infinity's WVEE from a Class C station to a Class C0 station. Counterproposal at 3. Because NTM's Counterproposal does not comply with the Class C0 reclassification procedures established by the Commission, it should be summarily dismissed.

On September 1, 2001, NTM filed an original Petition for Rulemaking (the "Petition") to amend the FM Table of Allotments in the same manner as set forth in its Counterproposal. Public notice of the Petition has not yet been released. In its November 20, 2001 Counterproposal, NTM acknowledges that its Petition is mutually exclusive with Southern's earlier-filed petition for rulemaking. Counterproposal at 2. Although the Commission's processing guidelines, as summarized in the Appendix to the NPRM, state that conflicting petitions for rulemaking that are filed before the date for filing initial comments shall be treated as comments in that rulemaking proceeding, NTM elected to request the dismissal of its Petition and to refile it as a counterproposal in this proceeding. *Id.* It is irrelevant whether the Commission treats NTM's Petition as comments in the instant proceeding or dismisses the Petition and considers NTM's refilled Counterproposal. In either instance, NTM's request is procedurally defective and must be dismissed.

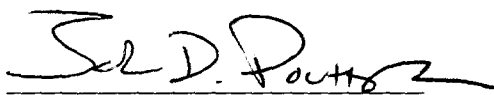
In the Commission's Second Report and Order in *1988 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules* (the "*Streamlining Second Report & Order*"), the Commission made clear that requests for reclassifications of Class C stations to Class C0 stations "may be initiated only through an original petition for rule making to amend the FM Table of Allotments, and not through comments or counterproposals." 15 FCC Rcd 21649, 21664 (2000) (emphasis added). *See also* 47 C.F.R. § 1.420(g), Note 2 ("[t]he reclassification of a Class C station in accordance with the procedure set forth in NOTE 4 to §73.3573 may be initiated through the filing of an original

petition for amendment of the FM Table of Allotments”). The purpose of this restriction was to “avoid disrupting the efficient and orderly processing of petitions for rule making and imposing unnecessary burdens on the parties to such proceedings.” *Streamlining Second Report & Order* at 21664.

Under this controlling precedent, NTM’s attempt to initiate a reclassification of WVEE from a Class C station to a Class C0 station, whether such request is styled as comments or a counterproposal in this proceeding, is procedurally defective. Such requests may only be initiated through an original petition for rulemaking. Infinity therefore respectfully requests that the Commission dismiss both NTM’s Counterproposal and Petition as unacceptable for filing.

Respectfully submitted,

INFINITY BROADCASTING OPERATIONS INC.

By: 
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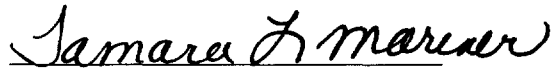
Its Attorneys

CERTIFICATE OF SERVICE

I, Tamara L. Mariner, do hereby certify that I caused a true and correct copy of the foregoing "Reply Comments" to be served via first class mail, postage prepaid, on this 11th day of December, 2001, upon the following:

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Tamara L. Mariner